

REMARKS

Claims 1-34 and 56-59, as amended remain in the present application for the Examiner's review and consideration. New claims 60-68 are added. Support for claims 60-62 and 66-68 can be found throughout the specification, but particularly on page 3, lines 29-30 and page 7, lines 23-25, among other locations. Support for claim 63 can be found on page 9, lines 3-5. Support for claim 64 can be found on page 6, lines 29-30. Support for claim 65 can be found on page 7, lines 5-7. No new matter has been added.

Applicant greatly appreciates the courtesy extended by the Examiner to Applicant and his attorney during the interview on June 14, 2006.

Independent claims 1, 26, 56-59 have been amended to delete the limitation that the face layer is "forming at least a portion of a top surface of the composite," added in the Amendment dated October 11, 2005, since the Examiner does not deem that this amendment overcomes the cited U.S. patent application publication no. 2003/0232171 to Keith et al. ("Keith"). As discussed during the interview, the amendments above and arguments below are presented to overcome the art of record.

Claims 1-5, 16-21, 23 and 56-57 were rejected under 35 U.S.C. § 102(e) as being anticipated by the Keith reference for the reasons given in paragraphs 3 and 20 of the Office Action. The Examiner states that Keith discloses a plurality of pile forming yarns projecting from a primary base 22 (fibrous face layer) with the plurality of yarns anchored in a layer of latex 24. The Examiner interprets the areas between the loops of the pile layer the nonwoven layer as forming at least a portion of a top surface of the composite. In this group of rejected claims, claims 1 and 56-57 are the independent claims in this group. The other claims depend on claim 1.

As illustrated in Fig. 1A from Keith, a carpet fabric 12 layer includes a backing 22 and a latex pre-coat 24. The carpet fabric is a tufted product (paragraph 0057) formed by a loop pile layer 20 that has been tufted into the backing 22. Loop pile layer 20 and backing layer 22 are separate structures.

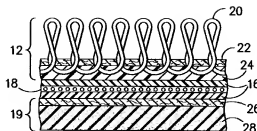


FIG. -1A-

Claim 1, as currently amended now recites that the “legs are made from a portion of the fibrous face layer.” As discussed during the interview, layer 22 and layer 20 of Keith are separate layers and the loops/legs in layer 20 are not made from any part of layer 22 contrary to amended claim 1. Therefore, claim 1, as currently amended is patentable over Keith.

Independent claim 56 recites a composite containing a face layer made from needle punched non-woven fabrics. The Examiner asserts that Keith is silent as to the manner in which the projecting yarns are punched through the nonwoven backing into the adhesive layer, making it reasonable to presume that the fibers were needle-punched. It is expressly stated in Keith (paragraph 0057) that the primary carpet fabric layer is a tufted product. Tufted carpet involves a well known process for making carpet using a tufting machine that inserts loops of yarn into a primary backing. Although needles are used in the process, a tufting machine does not produce needle-punched products as understood by one of ordinary skill in the art. However, to advance the prosecution of the present application, claim 56 has been amended to recite that the “legs are made from a portion of the fibrous face layer” similar to claim 1, and claim 56, as amended, is therefore also patentable over the Keith reference.

Claim 57 recites a composite containing a gathered fabric. There is no teaching or disclosure in Keith regarding gathered fabric as currently recited in claim 57. However, to advance the prosecution of the present application, claim 57 has been amended to recite that the “legs are made from a portion of the fibrous face layer” similar to claim 1, and claim 57, as amended, is therefore also patentable over the Keith reference.

Claims 2-5, 16-21, 23 depend either directly or indirectly from claim 1, which as discussed above is patentable over Keith. Therefore, claims 2-5, 16-21, 23 are also patentable over Keith due to their dependency and additional recitations that further

define these claims over Keith. Applicant believes that it is unnecessary to address these specific grounds of rejection of the dependent claims at this time; however, Applicant reserves the right to address these rejections should that become necessary.

Claims 1, 3-5, 21, 23, 26, 27, 29, 31 and 56 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. patent no. 4,645,699 to Neveu for the reasons given in paragraph 4 of the office action. Claims 1, 26 and 56 are the independent claims in this group. The Examiner interprets that Neveu discloses all of the recitations of these claims including a plurality of legs 14 that are dependent from the fibrous face layer 13 and punched through the nonwoven layer into the adhesive layer 12.

Neveu discloses a cleaning material constituted of a non-woven web of fibers having ends or loops protruding from one face thereof (col. 1, lines 34-36). The surface of the web containing the ends or loops constitutes the cleaning surface (col. 2, lines 62-63). A porous water-absorbing material is bonded to the face of the web opposite the cleaning surface (col. 3, lines 17-19). Importantly, Neveu specifically teaches that

interlayer (12) may be formed of any suitable material which may be applied on the rear face of the non-woven web of fibers (11), which will not migrate through said web, which will prevent the migration of the adhesive used for bonding the sponge (10) through the fibrous layer.

(col. 4, lines 24-29)(emphasis added).

As currently amended independent claims 1, the adhesive layer “at least partially penetrates into the fibrous face layer by pressure.” Support for this amendment can be found throughout the specification, including but not limited to page 6, lines 29-30 and claims 26 and 28, as originally filed. Contrary to currently amended claim 1, the Neveu reference specifically teaches that migration of adhesive into the fibrous face layer is to be prevented. Hence, claim 1 as presently amended is patentable over the Neveu reference.

Independent claim 26 already requires that “the adhesive layer [extends] partially into ... the face layer a distance sufficient to anchor the face layer in the adhesive layer.” Since Neveu discloses that adhesive must not migrate into the face layer, claim 26 is also patentable over the Neveu reference.

Independent claim 56 has been amended to recite that “the adhesive layer at least partially penetrates into the fibrous layer” similar to claim 1, and is therefore also patentable

over the Neveu reference.

Claims 3-5, 21, 23, 27, 29 and 31 depend either directly or indirectly from claims 1 and 26, which as discussed above are patentable over Neveu. Therefore, claims 3-5, 21, 23, 27, 29 and 31 are also patentable over Neveu due to their dependency and additional recitations. Applicant believes that it is unnecessary to address these specific grounds of rejection of the dependent claims at this time; however, Applicant reserves the right to address these rejections should that become necessary. Thus, this rejection has been overcome and should be withdrawn.

Claims 6-7 were rejected under 35 U.S.C. § 103 as being obvious over a hypothetical combination of Keith and U.S. patent application publication no. 2003/0152743 to Matsunaga et al. ("Matsunaga") for the reasons given in paragraph 5 of the Office Action. Claims 6-7 depend from claim 1 and recite further limitations therefrom. Claim 1 as amended is patentable over Keith and Matsunaga fails to remedy the deficiencies of Keith. Therefore, claims 6-7 are patentable over Keith in view of Matsunaga.

Claims 8-10 and 24-25 were rejected under 35 U.S.C. § 103 as being obvious over Keith further in view of U.S. patent no. 5,763,040 to Murphy et al. ("Murphy") and U.S. patent no. 4,576,840 to Murata et al. ("Murata") for the reasons given in paragraph 6 of the Office Action. Claims 8-10 and 24-25 depend either directly or indirectly from claim 1 and recite further limitations therefrom. Claim 1 as amended is patentable over Keith and Murphy and Murata fail to remedy the deficiencies of Keith. Therefore, claims 8-10 and 24-25 are patentable over Keith in view of Murphy and Murata.

Claim 11 was rejected under 35 U.S.C. § 103 as being obvious over Keith in view of Murphy and Murata and further in view of U.S. patent no. 5,283,097 to Gillyns et al. ("Gillyns") for the reason given in paragraph 7 of the Office Action. Claim 11 depends indirectly from claim 1 and recites further limitation therefrom. Claim 1 as amended is patentable over Keith, and Murphy, Murata and Gillyns fail to remedy the deficiencies of Keith. Therefore, claim 11 is patentable over Keith in view of Murphy and Murata and further in view of Gillyns.

Claims 12-15 were rejected under 35 U.S.C. § 103 as being unpatentable over Keith in view of Gillyns for the reason given in paragraph 8 of the Office Action. Claims 12-15 depend either directly or indirectly from claim 1 and recite further limitations therefrom. Claim 1 as amended is patentable over Keith, and Gillyns fails to remedy the deficiencies of

Keith. Therefore, claims 12-15 are patentable over Keith in view of Gillyns.

Claims 26-29, 31-32 and 34 were rejected under 35 U.S.C. § 103 as being unpatentable over Keith in view of European patent no. EP 0547533 A1 to Ladeur et al. ("Ladeur") for the reasons given in paragraph 9 of the Office Action. In this group of claims, claim 26 is the only independent claim. As stated in the Office Action, Keith is silent as to altering the bottom surface. In addition, there is no teaching or disclosure in Keith regarding the adhesive layer 24 extending partially into the thickness of the face layer 22 as is recited in claim 26. These deficiencies of Keith are not remedied by reference to Ladeur, which also fails to disclose any modifications of a bottom surface of the face layer 1 to increase surface area or an adhesive layer 3 that extends at least partially into the thickness of the face layer. Therefore, a hypothetical combination of Keith and Ladeur would not have all the elements of claim 26.

It is difficult to ascertain the structure of the composite disclosed in Ladeur from the machine language translation supplied by the Examiner. Applicant is able to locate a granted EP patent (EP 0547533 B1) that matured from the Ladeur reference. The granted EP '533 B1 patent contains the issued claims in English, and claim 1 is reproduced below:

1. A clampable textile floor covering consisting of: a base weave (1) and a pile (2) connected thereto and covering it on the tread side, the weave (1) and pile (2) being produced from polymer fibres by-tufting; and a backing layer (6+7) which is connected to the base weave on the side remote from the pile - i.e., on the reverse side - and which determines treadability,

characterised in that

the backing layer is a composite consisting mainly of a non-woven (6) set in a woven or knitted structure of strips or filaments or fibre yarn, and

the base weave and backing layer are interconnected by means of a technology not impairing the suitability of the floor covering for recycling.

(emphasis added). Claim 1 of EP '533 B1 patent is instructive in this analysis, and this claim clearly states that any connection between the base weave layer and the backing is "remote from the pile." That means that no pile(s) or leg(s) is involved in the connection between the face layer and the backing, contrary to the Examiner's interpretation in

paragraph 11 of the 9/28/2005 Office Action. Furthermore, nothing the Ladeur reference, including the drawings, shows legs or piles protruding below base weave (1). Claim 1 of EP '533 B1 patent does not discuss altering the bottom surface of the face layer, as claimed in claim 26. None of the dependent claims to claim 1 of EP '533 B1 further discusses base weave (1) and pile (2), and nothing in the machine translation of the Ladeur reference discusses altering the bottom surface of base weave (2).

Applicant submits that the Ladeur reference is cumulative to the Keith reference, *i.e.*, base weave (1) of Ladeur corresponds to layer 22 of Keith, and pile (2) of Ladeur corresponds to pile layer 20 of Keith. Neither Ladeur nor Keith discloses altering the bottom surface of the face layer, as recited in claim 26. Hence, claim 26 is patentable over the combination of Keith and Ladeur.

Claims 27-29, 31-32 and 34 depend on claim 26 and recite additional limitations therefrom. Hence, these claims are presently patentable due to their dependency. Applicant reserves the right to address the related rejections stated in the Office Action including, but not limited to, the rationale for combining the cited references and any alleged inherent properties not specifically disclosed in the cited art, should that becomes necessary. Therefore, this rejection has been overcome and should be withdrawn.

Claims 30 and 33 were rejected under 35 U.S.C. § 103 as being unpatentable over Keith in view of Ladeur and in further view of Murphy for the reasons given in paragraph 10 of the Office Action. Claims 30 and 33 depend on claim 26 and recite additional limitations therefrom. Hence, claims 30 and 33 are patentable over Keith in view of Ladeur and in further view of Murphy.

Claim 58 was rejected under 35 U.S.C. § 103 as being unpatentable over Keith in view of Murphy and further in view of U.S. patent no. 5,075,142 to Zafiroglu for the reasons given in paragraph 11 of the Office Action. The Examiner agrees that Keith and Murphy are silent as to knitted fabrics. There is no disclosure in Zafiroglu '142 of a knit fabric made from textured yarns, and all three references lack disclosure of legs anchored in the adhesive layer, as currently recited in claim 58. However, to advance the prosecution of the present application, Applicant has amended claim 58 to recite that the legs are made from a portion of the fibrous face layer, similar to claim 1, to further distinguish claim from the primary Keith reference. Applicant respectfully submits that claim 58, as amended, is patentable over Keith in view of Murphy and further in view of Zafiroglu.

Claim 59 was rejected under 35 U.S.C. § 103 as being unpatentable over Keith in view of Zafiroglu '142, as stated in paragraph 12 of the present Office Action. Claim 59 recites a composite containing a brushed woven forming a plurality of legs. The Examiner agrees that Keith does not disclose a brush woven and that Zafiroglu '142 discloses a stitch-bonded nonwoven fabric. The Examiner takes the position that the nonwoven fabric in Zafiroglu '142 is equivalent to a brushed woven. Applicant submits that one of ordinary skill in the art would not equate a woven product to any nonwoven product. However, to advance the prosecution of the present application, Applicant has amended claim 59 to recite that the legs are made from a portion of the fibrous face layer, similar to claim 1, to further distinguish claim from the primary Keith reference. Hence, claim 59 as amended is patentable over Keith in view of Zafiroglu.

Claims 1-34 and 56-59 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 and 38-62 of co-pending Application No. 10/611,470 in view of Keith for the reasons given in paragraphs 13 and 14 of the Office Action.

Provisional double patenting rejections involving two co-pending applications should continue to be made in each application as long as there are conflicting claims in more than one application. *See*, MPEP 822.01. Applicant notes that in co-pending Application No. 10/611,470, in an Office Action mailed February 8, 2006, the present Examiner stated in paragraph 12, that the provisional double patenting rejection in view of Application No. 10/611,769, *i.e.*, the present application, has been withdrawn as the '769 application is directed to a materially different application. Therefore, the double patenting rejection in the co-pending case has not been maintained, and the Examiner has stated that the present application as recited in the claims is materially different that the claims of Application No. 10/611,470. Therefore, this rejection should be withdrawn.

Applicant asserts that all claims are now in condition for allowance, early notice of which is respectfully requested. No fees are believed due for the submission of this amendment. Should any fees in fact be due, please charge such fees to Deposit Account No. 50-1980. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such extension is requested and should also be charged to said Deposit Account.

Respectfully submitted,

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